"I do not like the police traps any more than does anybody else; but at the same time there are some offences the commission of which cannot be found out in any other ways, and unlawful acts done in consequence of the trap are none the less unlawful".

The next point submitted by counsel for the appellant was that the magistrate erred in law in admitting evidence of statements made by the appellant to the sergeant. Section 121(1) of the Criminal Procedure Code (Cap. 132) provides as follows:

"Save as herein provided, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence".

The magistrate decided that the sergeant was not a police officer at the time of the investigation. In my opinion he was clearly wrong. The Solicitor-General, who represented the respondent, conceded that the statements made by the appellant to the sergeant were made in the course of a police investigation and were inadmissible.

It seems to me, however, that the evidence remaining after excluding those statements was sufficient to support the conviction. There was the evidence of the sergeant that the intention expressed by him to the appellant was that he wished to buy 10,000 character numbers; that the numbers he wanted were 2648, 3587 and 4496; that the numbers were written on a piece of paper which he handed to the appellant; that he paid the appellant $3 and received a slip of paper, Ex. P. 2, from him. Ex. P. 2 purported to be a receipt for a cash sale covering three items totalling $107.31. But it is clear that there was no such cash sale. Ex. P. 2 contained the three numbers which the sergeant wanted and a total to give it the appearance of a cash sale receipt. In my opinion, Ex. P. 2 on the evidence of the sergeant, was clearly a lottery ticket within the meaning of section 2(1) of the Common Gaming Houses Ordinance, 1961, which defines a lottery ticket as follows:

"Lottery ticket" includes any paper, figure or writing which either expressly or tacitly entitles or purports to entitle the holder to receive any money or money's worth on the happening of any event or contingency connected with any public lottery;

It is to be noted that the same subsection defines a public lottery as follows:

"Public lottery" means a lottery to which the public or any class of the public has or may have access and every lottery shall, until the contrary is proved, be deemed a public lottery;

Under section 10(1) of the Common Gaming Houses Ordinance a person selling lottery tickets shall be presumed until the contrary is proved to be assisting in a public lottery then in progress. The appellant elected to remain silent and failed to rebut this presumption. It may be added here that the roll of paper, Ex. P. 6, removed from the machine contained 219 entries all of which consisted of four-digit numbers, with totals appearing at intervals. The roll contained the three four-digit numbers appearing on the slip of paper which the sergeant received from the appellant. As all the numbers on the roll excluding the totals were four-digit numbers it seemed unlikely that the roll was a record of cash sales.

The third point submitted by counsel for the appellant was that the magistrate erred in law in accepting the bare expression of opinion of the expert witness, Inspector Yap, given without indicating the reasons on which his opinion was based. Inspector Yap testified that Ex. P. 2 was a staking slip, a record of 3 stakes in the 10,000 characters lottery, and that Ex. P. 6 was a record of 219 stakes in the 10,000 characters lottery. Here attention must be drawn to section 10(2) of the Common Gaming Houses Ordinance which provides as follows:

"Where evidence is given by a police officer not below the rank of sergeant that any document produced before the court is a lottery ticket of any public lottery or is an account, memorandum, riddle or record of stakes or wagers in or relating to any public lottery, the court shall presume that such document is a lottery ticket of such public lottery or an account, memorandum, riddle or record of stakes or wagers in or relating to such public lottery, as the case may be".

If this statutory presumption is taken into consideration, counsel's submission was not quite correct. It must be conceded, however, that as Inspector Yap stated in cross-examination that his opinion was based on the fact that Exs. P. 2 and P. 6 were sent to him by the C.I.D. his opinion was discredited and should have been disregarded by the magistrate. But excluding Inspector Yap's evidence, there was enough evidence to support the conviction. The discrediting of the expert did not mean that the rest of the prosecution evidence had been rebutted by the defence.

It was for the above reasons that I came to the conclusion that the appeal should be dismissed.

Appeal allowed.

LIM LEE TONG & ANOR. v. RAJAH

[O.C.J. (Ong J.) May 15, 1964]

[K.L. — Civil Suit No. 937 of 1962]

Landlord and Tenant — Controlled premises — Rent — Tenant's failure to pay — Whether landlord to make demand on premises — Whether rent due under covenant or privity of estate — Substantial damage to premises — Whether ground for possession — Control of Rent Ordinance, 1956, s. 12(1)(c), (d).

The plaintiffs were the landlords of certain rent controlled premises occupied by the defendant at a monthly rent of $40 per house which was subsequently reduced to $18 per house. The defendant failed to pay rent for six months as a result of which the plaintiffs

terminated the tenancy by notice. On receipt of the notice, the defendant tendered the arrears of rent.

The plaintiffs instructed a chartered quantity surveyor to inspect the premises and he reported that damage not ascribable to fair wear and tear would require $1,492.60 to be put right. The defendant repaired the premises after commencement of action.

The plaintiffs commenced proceedings for recovery of possession of the premises on the grounds that: (1) the defendant had failed to pay rent from March 1, 1962 to August 31, 1962 although demanded on the premises and (2) the defendant had caused substantial damage to the premises. The defendant contended that no demand for arrears was made by the plaintiffs on the premises and that the damage was caused by fair wear and tear.

Held: (1) where, as in this case, there was an express covenant for payment of rent, the tenant must seek out the landlord and pay it to him. Where the tenant fails to pay or tender rent inspite of repeated demands the landlord is entitled to recover possession;

(2) once substantial damage to the premises had been proved to have been caused by the tenant, section 12(1)(d) of the Ordinance entitles the landlord to an order for possession, whether or not the damage was subsequently made good.

Cases referred to:—

(1) *Varthammal* v. *Tan Yee Moh* [1948] M.L.J. 180.

(2) *Tan Yee Moh* v. *Varthammal* [1948] M.L.J. 55.

(3) *Haldane* v. *Johnson* (1853) 8 Exch. 689, 695; 155 E.R. 1529 - 31.

(4) *Crouche* v. *Fastolfe* (1680) T. Raym. 418.

(5) *Rowe* v. *Young* 129 E.R. 921, 952 - 3.

CIVIL SUIT.

K. L. Devaser for the plaintiffs.

N. A. Marjoribanks for the defendant.

Ong J.: The plaintiffs, husband and wife, are co-owners and landlords of rent-controlled premises Nos. 79 & 80 Maxwell Street, Rawang. The defendant is the proprietor and principal of a private school known as Clive Institution. He is the tenant of a block of four houses, Nos. 77, 78, 79 and 80. One of them, No. 77, is occupied by the defendant as a private dwelling-house, while the other three adjoining houses were used for school purposes, or rather, they were so furnished. Nos. 77 and 78 belong to other landlords.

The facts are clear and straightforward. The defendant had been running his school in these same premises since 1936. In 1947 he purchased Nos. 79 and 80 from the Chettiar owners. In 1952 he sold the premises to the plaintiffs and agreed, as tenant, to pay them a monthly rent of $40 per house. Some time later the plaintiffs moved into the back portion of No. 79, which they made into a dwelling of sorts, and rent of the two houses was then reduced to $70. In November, 1961, the plaintiffs sued the defendant in Rawang Sessions Court for possession of the premises, on the ground that he had failed to pay the rent due up to October 1961, amounting to $900. The defendant denied that any rent was in arrear and claimed in his defence, that he had in fact overpaid the plaintiffs because the maximum recoverable rent was only $36 per month. In the result he was, on February 14, 1962, given judgment on his counter-claim for $1,818 and costs in the action amounting to $305.

On or about February 27, 1962, mediators brought about a settlement, and the defendant accepted payment of $600 in full satisfaction of the judgment obtained by him. On March 22, 1962 the plaintiffs also paid up the costs of the action to the defendant's solicitors. In the writing (ex.D1) prepared by the defendant, and signed by himself and the mediators as witnesses, the following agreement was inserted in the terms of settlement: "....and they further bind themselves to receive peacefully from me from March, 1962, monthly $18 (dollars eighteen only) in respect of each of the aforesaid houses. I also agree to allow the parties to remain as hitherto at the back part of house No. 79 rent free."

However, the rent from March 1962 onwards was not paid or tendered for six months, and on August 5, 1962 the plaintiffs, through their solicitors, served notice in writing on the defendant terminating his tenancy on September 30, 1962, and demanding payment of the rents in arrear. The defendant replied to the plaintiffs' solicitors on September 12, 1962, enclosing his cheque for $216 in payment.

On October 30, 1962, the plaintiffs instructed a chartered quantity surveyor to inspect the premises and report on the condition of the buildings. On November 5, 1962 he made his report, which is on pages 8 - 11 of ex.A, the agreed bundle of documents. His evidence, not challenged, was that, but for three minor items costing $63.50 for repairs, damage not ascribable to fair wear and tear would require $1,492.60 to be put right.

The plaintiffs accordingly commenced this action on November 30, 1962, claiming possession of the premises from the defendant on two grounds: (a) that the defendant had failed to pay rent from March 1, 1962 to August 31, 1962 although demanded on the premises; and (b) that the defendant had caused substantial damage to the premises: (see paragraphs (c) and (d) of section 12(1) of the Control of Rent Ordinance, 1956).

As to the first ground, the defendant by his defence admitted that he was in arrears with the payment of rent but denied that any demand had been made at the premises; as to the second ground, the defendant pleaded that if any damage had been caused, which was denied, it was not substantial and arose out of fair wear and tear.

I shall deal with these two issues in proper order. First, as to the necessity for a demand being made for rent at the premises, I think, with all respect, that the law on the subject has been misconceived on both sides. In *Varthammal* v. *Tan Yee Moh*,[1] Murray-Aynsley C.J. explained the law (which Evans J. in the court below had enunciated in his most laconic manner) as follows:

> "On the hearing of the appeal Mr. Justice Evans in an erudite judgment decided in favour of the tenant solely on the ground that the landlord must demand the rent on the demised premises, where the rent is claimed by privity of estate and not on a covenant. With this proposition I agree and have nothing to add."

In that case the facts were that Tan Yee Moh was already a tenant in possesion when Varthammal purchased the premises and shortly afterwards she took action to recover possession. "There was no question of any covenant to pay". (see judgment of Evans J.[2] at p. 56). Rent was claimed by privity of estate, and the landlord's claim lay in debt, not in covenant.

In the present case, however, there was an express agreement entered into in 1952 between the parties for payment of rent — albeit at an unlawful rate — which was renewed, so far as the material dates are concerned, by the agreement reduced to writing on February 27, 1962 (ex.D1). The plaintiff's claim for rent accordingly lay in covenant, and *Haldane* v. *Johnson* [3] is authority for the proposition that, under an express covenant for payment of rent, the lessee must seek out the lesser and pay it to him. It is only where there is no express covenant that the lessee must be prepared to pay it on the demised premises on the appointed day: see *Crouche* v. *Fastolfe*,[4] and *Rowe* v. *Young*.[5] On the question of law, therefore, the plaintiffs have made out their first ground for recovery of possession under paragraph (a) of section 12(1) by reason of the defendant's admitted failure to pay or tender rent. Nothing more is required of them to entitle them to judgment.

On the question of fact also, I am abundantly satisfied, after seeing and hearing both plaintiffs and their witness, that they were telling the truth, and I find as a fact that demands for rent were made repeatedly from the defendant by the first plaintiff, and once by his wife. Her description of the solitary occasion that she called for rent, the waiting and the humiliation she suffered — which discouraged her from making any further attempts at rent-collecting — impressed me as having the ring of truth. Her demeanour in recalling the incident was unmistakable of the intense mortification she must have felt at the time.

By contrast, let it be said without any equivocation that I find the defendant no less unscrupulous towards the plaintiffs in 1962 than he was twelve years ago. The plaintiffs have stated in their evidence, which I believe, and which the defendant denied, that the sale price for the two houses was agreed at $10,000 but they paid the defendant an additional $3,000 for his promise of vacant possession. They were simple peasants trustfully dealing with a person of some status and learning. The transfer of Certificates of Title 2699 & 2700 (which titles were produced in court and returned by me to the plaintiffs after examination) showed the date of transfer as June 25, 1952. But ten days earlier, on June 15, 1952, the defendant had given them an undertaking in writing (ex.P4) in these terms:

> "I, V. Rajah, J.P., of Rawang hereby undertake to render vacant possession of my houses Nos. 79 & 80, Maxwell Street, Rawang, which I have sold to Lim Leh Thong and Ong Lee Kee of Rawang when I no longer need them for my own use.
>
> V. Rajah, J.P."

Why was this undertaking given unless for the express purpose of assuring them of the vacant possession they desired before they would complete the transfer? A person who had no scruples about giving an undertaking not worth the paper it was written on is hardly a person whose bare denial can outweigh the words of an honest couple. Am I being unfair in saying that this school headmaster was guilty of sharp practice twelve years ago? I think not.

Now, I refer to this letter of September 9, 1962, which I would quote in full:

> "CLIVE INSTITUTION
>
> V. Rajah, J.P.
> Headmaster
>
> Rawang, Selangor,
> 12. 9. 1962.
>
> Messrs. K. L. Devaser & Co.,
> Advocates & Solicitors,
> Klyne Street,
> KUALA LUMPUR.
>
> Gentlemen,
>
> Your Ref: KLD/BE/LLT & OLK/62
>
> With reference to your letter of 15.8.62 received by me on 24.8.62, I regret that I have not been able to reply to it up to now due to continued ill-health. Please find enclosed cheque for $216 (dollars two hundred and sixteen only) in payment of rent from March to August, 1962, both months inclusive.
>
> I am more than shocked to know that repeated demands have been made by your clients for this money. There was a litigation regarding the rent of these premises and I have not received from him a court award of a sum in the neighbourhood of $2,000 (dollars two thousand only) representing excess rent collected by him unlawfully. Perhaps, in view of this, he remained completely silent regarding the rent due to him since March, 1962. Not once he saw me, not one letter he wrote to me, either ordinary or registered, and he has come direct to you and deliberately told you an utter falsehood. Some time back there was a small incident when most courteously he and his wife's attention was drawn to an act of one of his children for no cause beating a child of mine much younger to his. He has not been able to appreciate my action is obvious to me now by his or their action.

I take this opportunity to point out that they are staying in a portion of one of the aforesaid premises totally free and the discourtesy, not to say anything of the gross misrepresentation that he had made to you, all these are perplexing me terribly. Anyhow I just stop here for the moment. I may yet add that he was on bended knees after the case. He thinks they are straight now. Perhaps it is better to have them bended again (not in the literal sense) just to make him a better man and not at all out of a feeling of gaining any personal triumph.

Yours faithfully,

(Sd.) V. Rajah, J.P."

The defendant has admitted that paragraph 1 did not truly state the reason for the delay. The truth was that he wanted to await the return of one of the mediators from Singapore. This mediator was one of those who had settled the claim arising out of the Rawang action. Remembering that the mediation had led to the plaintiffs' paying $600 to the defendant in full settlement in February, the defendant yet had the brazen effrontery to act the outraged innocent in paragraph 2. In the last paragraph he added insult to injury by his insolence, talking down from his seat of majesty as a State Councillor and Justice of the Peace.

The defendant was no more truthful giving evidence in court. Early in his evidence-in-chief he stated that he was then having three classes. from 7.30 a.m. to 1 p.m. and "kindergarten till 12.30". In fact there never has yet been a kindergarten class in the premises — much less one that breaks up at 12.30. He had subsequently to disclose the truth when compelled to state in detail the disposition and use made of each classroom, house by house.

Finally, I do not think he anticipated that I would proceed forthwith to Rawang to view the premises, after adjournment of the first day's hearing, when he said: "No. 78 had been rented out to a contractor, Chai Fook, sublet to him for one year." That very afternoon I inspected premises Nos. 78, 79 & 80, but did not enter No. 77 which is the defendant's dwelling. I found both floors of No. 78 equipped as classrooms, identical in every respect with No. 80. It is surprising that, after 13 months of alleged occupation, I saw neither hide nor hair of the alleged sub-tenant, the premises were locked up, but accessible from Nos. 79 & 80 by way of the top floor; there was inter-communication between Nos. 78, 79 & 80; there was not a single stick of household furniture, no kitchen utensils, nor any vestige of user either for a dwelling or for business purposes even remotely connected with the alleged sub-tenant's occupation as an estate and replanting contractor. Of premises No. 79 the first plaintiff had said: "House No. 79 had been empty, top and ground floors. Since commencement of my action defendant moved pupils from house No. 78 into my house No. 80, ground floor." The view I had of the various premises definitely confirms that the first plaintiff was speaking nothing but the truth. He lives on the ground floor at the back of No. 79 and was an interested spectator. The alleged sub-letting was proved to my satisfaction to be a sham.

As to the second issue in this case, it is my view that, once substantial damage to the premises has been proved to have been caused by the tenant, paragraph (d) of section 12(1) entitles the landlord to an order for possession, whether or not the damage was subsequently made good. Section 12(2), for instance, gives the court discretion in granting relief in cases where rent falls in arrear. Certain other grounds under section 12(1) allow also the exercise of a similar discretion. But I do not think para (d) in terms is one of them. The question of what is substantial damage is, of course, one of fact and of degree. In this case, however, the expenditure of less than half of $3,200 on two old buildings would not appear to indicate that the damage had been so substantial as to be beyond dispute. But as the repairs were not carried out until after commencement of this action, the plaintiffs were entitled in my view, to plead paragraph (d) as one of their grounds for claiming repossession. No notice had been given to the plaintiffs that this cause of complaint had since been removed. Hence I see no reason why costs on this issue should be awarded to the defendant, as contended by counsel on his behalf.

In conclusion I feel that I should make one general observation on this case. My view of the premises afforded me an opportunity of seeing what sort of living quarters the defendant had been generous enough to vouchsafe his own landlords in fulfilment of his undertaking. The total area contains less than 20 feet by 30 feet of living space, roofed over with corrugated iron. The plaintiffs, with their 7 children occupy two small cubicles therein. The defendant with his wife and five children occupy a whole house, ground floor and top. By comparison one is a wretched hovel and the other a mansion. Until the end of 1947 the defendant had over 400 pupils for both morning and afternoon sessions. Their numbers fell on the opening of a Government school in Rawang. In 1962 there were only about 120 pupils, in 1963 about 75, and this year 82. Almost 12 years after the plaintiffs had spent their savings to purchase their two houses they still had no home to call their own, because the defendant would not honour his undertaking. Since five years ago the defendant had room to spare, if his undertaking meant anything at all, but he had to be a dog in the manger. Rent was withheld, on his own admission, with a view to coercing the plaintiffs to pay for major repairs. Yet the unfortunate landlords were only receiving a net annual income of $146 per house! In all the years since rent control legislation came

into force, I have never come across a more iniquitous case of a protected tenant abusing the provisions of the Control of Rent Ordinance. I have never known more oppressive conduct on the part of a tenant towards his landlord.

I give judgment for the plaintiffs and order that the defendant deliver up vacant possession of premises Nos. 79 & 80 Maxwell Street, Rawang, to them by April 30, 1964; double rent to be payable after that date, and costs of this action to plaintiffs on the High Court scale; stay of execution in the event of an appeal.

The plaintiffs, may, if they so choose, have an inquiry before the Senior Assistant Registrar to determine the amount of compensation to be paid by defendant for restoring two party-walls at the back of the top-floor removed from the open space between premises Nos. 80, 79 & 78; and for replacing doors removed. These directions appear to be necessary from my own observations made while viewing the premises, and because evidence on this point appears to have been overlooked. This matter is not outside the pleadings because the claim includes one for damage to the premises.

Judgment for the plaintiffs.

Solicitors: *K. L. Devaser & Co.*; *Lovelace & Hastings.*

STRAITS CABARET (1953) LTD. v. LEE SOCK GOH

[O.C.J. (Choor Singh J.) May 21, 1964]
[Singapore — Suit No. 1100 of 1955]

Landlord and Tenant — Possession — Judgment for, by consent — Proviso that during residue of lease judgment for possession not enforceable — Expiry of lease — Holding over — Whether statutory tenancy created.

In 1957 the plaintiffs were given possession of the premises in question pursuant to a judgment by consent with the following proviso: "But provided that during the residue of the term of years created by the lease of the said premises made between the parties hereto and dated the 2nd day of March, 1954 such judgment and order for possession shall not be enforceable unless the rent for the said premises and for the trade and other fixtures and fittings referred to in the said lease at the rate of $1,000 per month as from the 1st day of August, 1957, has not been paid by the 21st day of any month following upon written demand served on the defendant in accordance with clause 6(c) of the said lease before the 14th day of that month, in which event the plaintiffs are to be at liberty to apply to the judge for leave to issue execution on this judgment and order and the court makes no further order in respect of the relief sought in the statement of claim herein and doth dismiss the counterclaim herein and makes no order as to the costs of the action or of the said counter claim and it is lastly ordered that the parties shall be at liberty to apply." On the expiry of the lease the defendant refused to give up possession of the premises.

Held: the judgment became enforceable upon the expiry of the lease, and the defendant became a trespasser as from that date. The question of the premises being rent controlled or otherwise did not arise as the matter had been dealt with at the trial and was now closed.

ACTION.

Goh Heng Leong for the plaintiffs.

L. M. Ong for the defendant.

Choor Singh J.: In this action judgment by consent was given in favour of the plaintiffs against the defendant on the 16th July, 1957, and it was ordered in the judgment that the defendant give to the plaintiffs possession of certain premises forthwith with the following proviso:

> "But provided that during the residue of the term of years created by the lease of the said premises made between the parties hereto and dated the 2nd day of March, 1954 such judgment and order for possession shall not be enforceable unless the rent for the said premises and for the trade and other fixtures and fittings referred to in the said lease at the rate of $1,000 per month as from the 1st day of August, 1957, has not been paid by the 21st day of any month following upon written demand served on the defendant in accordance with clause 6(c) of the said lease before the 14th day of that month, in which event the plaintiffs are to be at liberty to apply to the judge for leave to issue execution on this judgment and order and the court makes no further order in respect of the relief sought in the statement of claim herein and doth dismiss the counterclaim herein and makes no order as to the costs of the action or of the said counter claim and it is lastly ordered that the parties shall be at liberty to apply."

The trial of this action took place before Tan Ah Tah J. (as he then was) and the trial judge's notes read as follows:

> "Atkinson for plaintiffs.
>
> Rayner for defendant.
>
> Atkinson: The parties have settled the case. Certain payments are being made. The court will not be troubled with this aspect of the case.
>
> As to the claim for possession it has been agreed that a judgment be given to plaintiffs for possession but the judgment be suspended for so long as the defendant pays the rent. Mr. Rayner will admit that the premises are new premises and not subject to the Control of Rent Ordinance (tenders draft judgment).
>
> Rayner: I agree to the counterclaim being dismissed. I admit on behalf of defendant that the premises are new premises and are therefore not subject to the Control of Rent Ordinance. I agree with everything Mr. Atkinson has said.
>
> Judgment entered in terms of draft initialled by me."

The lease which was made on the 2nd March, 1954, between the plaintiffs and the defendant in respect of the premises in question expired on the 29th February 1964, and the defendant refused to give up possession of the premises upon the expiry of its lease.

In pursuance of the liberty to apply given by the judgment the plaintiffs applied by summons in chambers for an order that the defendant forthwith deliver up possession of the premises. At the hearing of this application counsel for the defendant maintained that the defendant was holding over and was therefore a statutory